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Canada, Natural Resources, Standing
Committee on (Senate) 1957/58
1957 Second Session

- N16 THE SENATE OF CANADA



PROCEEDINGS
OF THE
STANDING COMMITTEE
ON

NATURAL RESOURCES

To whom was referred the Bill (L), intituled: "An Act to amend
the Territorial Lands Act".

The Honourable Cyrille Vaillancourt, Chairman

THURSDAY, NOVEMBER 21, 1957

WITNESSES

Mr. R. G. Robertson, Deputy Minister, Department of Northern Affairs
and National Resources.

Mr. F. J. G. Cunningham, Assistant Deputy Minister, Department of
Northern Affairs and National Resources.

EDMOND CLOUTIER, C.M.G., O.A., D.S.P.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1957

STANDING COMMITTEE
ON
NATURAL RESOURCES

The Honourable Cyrille Vaillancourt, Chairman

The Honourable Senators

Aseltine	Emerson	Methot
Barbour	Farquhar	Nicol
Basha	Fraser	Paterson
Beaubien	*Haig	Pearson
Bois	Hawkins	Petten
Bouffard	Hayden	Power
Burchill	Horner	Raymond
Cameron	Kinley	Stambaugh
Comeau	*Macdonald	Taylor (<i>Norfolk</i>)
Crerar	MacKinnon	Taylor (<i>Westmorland</i>)
Davies	McDonald	Turgeon
Dessureault	McKeen	Vaillancourt
Dupuis	McLean	Wood (37)

40 Members

(Quorum 9)

*Ex officio member

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate

THURSDAY, October 31, 1957.

"Pursuant to the Order of the Day, the Honourable Senator Haig, P.C., moved, seconded by the Honourable Senator Aseltine, that the Bill (L), intituled: "An Act to amend the Territorial Lands Act", be now read the second time.

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Haig, P.C., moved, seconded by the Honourable Senator Aseltine, that the Bill be referred to the Standing Committee on Natural Resources.

The question being put on the motion, it was—

Resolved in the affirmative."

J. F. MacNEILL,
Clerk of the Senate.

MINUTES OF THE PROCEEDINGS

THURSDAY, November 21, 1957.

Pursuant to adjournment and notice the Standing Committee on Natural Resources met this day at 10.30 a.m.

Present: The Honourable Senators Vaillancourt, *Chairman*; Barbour, Bouffard, Davies, Basha, Dupuis, Macdonald, MacKinnon, McLean, Methot, Stambaugh and Turgeon—12.

In attendance: Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

Bill (L), “An Act to amend the Territorial Lands Act”, was considered.

The following were heard in explanation of the Bill:—

Mr. R. G. Robertson, Deputy Minister and Mr. F. J. G. Cunningham, Assistant Deputy Minister, Department of Northern Affairs and National Resources.

The Honourable Senator Vien was heard and suggested that further consideration of the Bill be postponed and that it be given consideration at the forthcoming Dominion Provincial Conference. After discussion, the Committee felt that the provincial officials would not have sufficient opportunity to study the Bill prior to the said conference.

The Honourable Senator Bouffard moved that the Committee do now adjourn and that a copy of the printed proceedings be forwarded to the Provincial Officials concerned with the provisions of the Bill and that they be invited to attend the meeting of the Committee when the Bill will again be under consideration.

On motion of the Honourable Senator Dupuis, it was resolved to report recommending that the Committee be authorized to print 800 copies in English and 200 copies in French of its proceedings on this Bill.

At 11.45 a.m. the Committee adjourned to the call of the Chairman.

Attest.

A. Fortier,
Clerk of the Committee.

THE SENATE
STANDING COMMITTEE ON NATURAL RESOURCES

EVIDENCE

OTTAWA, Thursday, November 21, 1957.

The Standing Committee on Natural Resources met this day at 10.30 a.m.
Senator Vaillancourt in the Chair.

The CHAIRMAN: Honourable senators, we are here to consider Bill L, an Act to amend the Territorial Lands Act, which is a very short bill. Perhaps it would be better to call Mr. R. G. Robertson, Deputy Minister of the Department of Northern Affairs and Natural Resources, to explain the bill.

Senator MACDONALD: Mr. Chairman, before Mr. Robertson gives his evidence, I would like to recall to the committee that when the bill was up for second reading in the house it was impossible to get an explanation of it; it was said at that time that a full explanation would be given in the committee. Some honourable senators raised the question of whether or not the rights of the provinces were involved in this legislation. The Leader of the Government said at that time that if the provinces objected they could be heard in committee. First I would like to know if there has been any objection from the provinces. If not, has anyone been in touch with the provinces with respect to this bill and do the provinces know anything about it?

The CHAIRMAN: What do you think about that?

Senator BOUFFARD: Has the Chairman or anybody in the committee advised the provinces that this bill was to be discussed here? Did the department do it?

Mr. ROBERTSON: Mr. Chairman, if I might say something on the matter, I think the question as to provincial interest arises out of what is perhaps an obscurity as to the intent of the bill. The bill is not intended to affect nor in fact does it affect provincial land in any way, nor does it change or attempt to change and in fact it could not change any land from being provincial to being federal. The sole intent of the bill is to ensure that the Territorial Lands Act, as a purely administrative framework, will apply not simply to federal land in the Yukon and Northwest Territories, which is now the case, but also to other land in Canada which is not now provincial and which is federal. The point is that in Canada, the territory of Canada, the land is all either provincial or federal. The control of the provinces in most cases, unless there is a special provision otherwise, only goes to the low-water mark on the coasts. Now, beyond the low-water mark there is submerged land that is Canadian soil but it is not a part of any province.

Senator BOUFFARD: Where would that be?

Mr. ROBERTSON: On all the coasts. For instance, in Hudson Bay the provinces go to the low water mark on the coast. There is land that is often covered only to a very small depth with water. On certain coasts that land shows indications now of having mineral resources and we have received a number of applications from companies who wish to record claims to the mineral resources in the land. As the Territorial Lands Act now stands—

Senator MACDONALD: What land is that again?

Mr. ROBERTSON: Land under Hudson Bay.

Senator MACDONALD: And the land beyond the low water mark, we will agree for argument's sake at the present time, belongs to the—

Mr. ROBERTSON: To the Crown in the right of Canada.

Senator MACDONALD: Is there a province adjoining it?

Mr. ROBERTSON: The provinces, according to the advice of the law officers of the Crown, extend to the low water line. They do not go beyond that.

Senator MACDONALD: And on Hudson Bay is it the province of Quebec that owns the land above the low water mark?

Mr. ROBERTSON: On the Quebec side it will be Quebec, and on the Ontario side it will be the province of Ontario. In other words, it will be the province of Quebec off the Quebec shore, the province of Ontario off the Ontario shore, and the province of Manitoba off the Manitoba shore. Each province owns the land as far as the low water line but beyond that the land is vested in the Crown in the right of Canada.

Senator BOUFFARD: Are you certain about that?

Mr. ROBERTSON: All I can say is that this is the advice of the law officers of the Crown.

Senator BOUFFARD: That is federal advice. Have the provinces agreed to that?

Mr. ROBERTSON: The provinces have not been asked. If they were to challenge it I presume they would do so in the courts.

Senator BOUFFARD: There are cases which have been decided by the Privy Council. There is the case of the Montreal Harbour which goes beyond the low water mark.

Mr. ROBERTSON: I should say, sir, that this principle does not apply in the case of rivers. The provinces own the river beds. Perhaps I should have made this point clear. I was speaking of regions such as the sea coasts or the coast of Hudson Bay. According to the law officers of the Crown the provinces own the river beds. For example, in the case of the Ottawa River, Quebec owns from its own shore to the middle of the river and Ontario owns the rest.

Senator BOUFFARD: What about the Gulf of St. Lawrence?

Mr. ROBERTSON: There is a line that has been normally taken from, I believe, River St. John to Cap des Rosiers as marking the boundary. The river is considered to be above the line and the Gulf below it.

Senator BOUFFARD: Take in the case of Cape Breton where they have coal mines under the water. The licences for those mines have always been granted by the province. I do not believe that the Dominion Steel and Coal Company, which is operating a mine and taking coal from it, has ever paid anything to the federal Government. That mine is undoubtedly under tidal waters.

Mr. ROBERTSON: I do not think it has ever paid anything to the federal Government, sir, and I would not be in a position to state that the mining rights are definitely federal or provincial. This bill does not purport to change the status of any land. It does not say what land is federal or provincial. What it does say is that wherever it is federal the Territorial Lands Act will apply. If I may revert to Senator Macdonald's original question, the provinces would have no proper interest in this bill because it does not purport to change the status of any land. As I say, it merely claims that where the land is federal the Territorial Lands Act will apply.

Senator MACDONALD: If we pass this bill we assume that all land beyond the low water mark is federal.

Mr. ROBERTSON: We do not necessarily assume anything. The advice we have had from the law officers of the Crown is to the effect that in the case of Hudson Bay and Hudson Strait the land beyond the low water mark is federal. In the case of the shores of the oceans the advice is that the land beyond the low water mark is federal.

Mr. HOPKINS: Within territorial waters.

Mr. ROBERTSON: Yes. When you get outside the territorial waters there is a growing doctrine that the country does not own the continental shelf but can exploit it.

Senator MÉTHOT: How can you justify your argument in the light of section 8 of the Territorial Lands Act, which reads:

Unless otherwise ordered by the Governor in Council, a strip of land 100 feet in width, measured from ordinary high water mark or from the boundary line, as the case may be, shall be deemed to be reserved to the Crown out of every grant of territorial lands, where the land extends (a) to the sea or an inlet thereof; (b) to the shore of any navigable water or an inlet thereof . . .

So it is not just land beyond the low water mark. The other land will become the property of the federal Government.

Senator BOUFFARD: In accordance with your interpretation, Mr. Robertson, you will apply the Territorial Lands Act to all properties that you find are situated within the territorial limits of Canada.

Mr. ROBERTSON: No, sir. The bill does not purport to say that any land is federal or that any land is provincial. All it purports to say is that wherever the land is federal the Territorial Lands Act applies. It does not affect the legal ownership or status in any way.

Senator MACDONALD: If I may take the second part of clause 1, it says:

Any other lands forming part of Canada but not included within any of the provinces . . .

Senator BOUFFARD: Yes.

Senator MACDONALD: That means, I take it, that any land below the water mark comes under the provisions of this act?

Mr. ROBERTSON: Senator, if the advice of our law officers is correct, that is the case, but this bill does not attempt to resolve that question. All it says is: wherever the land is federal, this act applies; if the matter went to the courts, and it was decided that the land was provincially owned below the low water mark, then this act would not apply to it.

Senator BOUFFARD: Mr. Robertson, have you got the opinion of the law officers of the Department of Justice concerning this bill, and if so, could you put that opinion before us?

Mr. ROBERTSON: The opinion of the law officers dealt with a number of specific questions that we raised concerning various matters as they arose. Perhaps I could read from a portion of the opinion of the law officers which appears to be relevant.

Senator BOUFFARD: Mr. Robertson, in the judgment of the Privy Council of the House of Lords on the Fisheries case in 1920, no mention is made about the low water mark; they refer to waters; the decision is, the bed of all waters situated within the territorial limits of a province remains provincial.

Mr. ROBERTSON: If I may say so, senator, I think "tidal waters" would be land covered with water during the tidal movement, and going down as far as the low water line. I believe the two mean the same thing.

Senator BOUFFARD: I read from the judgment:

"The answer was that, generally speaking, the proprietary title to these beds, excepting where expressly transferred, remained provincial.

It followed that the fishing rights were likewise provincial."

They go so far as to deal with fishing rights.

Mr. ROBERTSON: In tidal waters.

Senator BOUFFARD: This refers to tidal or any other kind of waters; no difference is made between rivers and beds of tidal waters. The judgment states that the fishing rights would have to be granted by the province, unless the lands had been validly transferred to some other person.

Mr. ROBERTSON: Mr. Chairman, I am not the proper person to deal with such questions of law in respect to this bill. These are matters which should be dealt with by the law officers of the Crown, whose advice we have on certain points. The essential point with respect to this bill is that it does not affect the legal status of any land anywhere; nor does it affect the title to any land. It merely says that if land is federal, wherever that land may be, the Territorial Lands Act applies to it; but the bill does not attempt to deal with the title to that land.

Senator MÉTHOT: Is this proposed legislation necessary or is it unnecessary?

Mr. ROBERTSON: It is necessary.

Senator MÉTHOT: If it is necessary, it is to take away that strip of land 100 feet in width measured from the high water mark. According to you, the title of lands in the Yukon and the Northwest Territories belongs to the federal Government, but when it comes to the land of a province, that is a different thing. Take for instance the city of Toronto which has reclaimed in Lake Ontario a large strip of land, involves a question of the jurisdiction of the province.

Mr. ROBERTSON: According to the advice of the law officers, the land under the Great Lakes is Crown land in the right of the province.

Senator MÉTHOT: But section 8 of the Territorial Lands Act applies to land throughout Canada. Section 8 of the act provides that unless otherwise ordered by the Governor in Council, a strip of land 100 feet in width shall be deemed to be reserved to the Crown, which is the federal Government.

Senator BOUFFARD: Then it will not be possible to administer these lands through the Territorial Lands Act?

Mr. ROBERTSON: No, sir. If you will go on in that section you will see that it provides that, unless otherwise ordered, a strip of land shall be deemed to be reserved to the Crown "out of every grant of territorial lands." But, there would be no territorial lands involved, and therefore it would not apply.

Senator MÉTHOT: Around Ungava Bay, and the same applies to Hudson Bay, you have to consider the interests of Ontario, Quebec and Manitoba.

Mr. ROBERTSON: The essential point is, this bill would not affect the status or the ownership of land anywhere. All its passage would do would be to provide for the control of federal land. You have asked me if the measure was necessary, and I say that it is necessary without getting into any provincial questions whatsoever. As matters now stand, the Territorial Lands Act does not enable us to administer off shore land off the Northwest Territories around Hudson Bay. According to the advice of the law officers of the Crown, the Northwest Territories go only to the low water mark, and we cannot administer land beyond the low water mark off the Northwest Territories under the Act as it stands.

Senator TURGEON: Mr. Robertson, would you read us that portion of the act as it now exists which would be repealed by the passage of this bill?

Mr. ROBERTSON: Section 2 (g) now reads:

"territorial lands' means lands in the Northwest Territories or in the Yukon Territory that are vested in the Crown or of which the Government of Canada has power to dispose."

In effect, the act as it stands at the present time is as shown in subparagraph (i) in section 1 of the bill, which says: "(i) lands in the Northwest Territories or in the Yukon Territory".

Senator MACDONALD: May I ask, why does the act have to be changed with respect to the Northwest Territories and the Yukon Territory?

Mr. ROBERTSON: It does not have to be changed in that respect.

Senator MACDONALD: I understood you to say it did.

Mr. ROBERTSON: The point is, we cannot administer the land lying off the shore of the Northwest Territories, because the advice of our law officers is that the Northwest Territories extend only to the low water mark; therefore, when it says "territorial lands" in the Northwest Territories it includes only land in the Northwest Territories as far as the low water mark—

Senator MACDONALD: I do not see how this act changes that situation in any respect.

Mr. ROBERTSON: It does. Subparagraph (ii) says, "any other lands forming part of Canada but not included within any of the provinces". To take a specific case, sir, there is at the present time a nickel mine at Rankin Inlet on Hudson Bay, on the shore of the Northwest Territories, which is at the present time mining ore below land immediately above low water mark. The mining operation is inland, but it is quite possible it will be found that the nickel ore goes out under the water. As the Territorial Lands Act now stands, we have no administrative machinery with which to control the operation below low water mark.

Senator MACKINNON: Where is that mine?

Mr. ROBERTSON: It is on the shore of Hudson Bay, about 350 miles north of Churchill, on the west coast.

Senator MCLEAN: Mr. Chairman, as I have another meeting to attend at 11 o'clock, and as I appear to be the only Maritime senator here, I would like to put a statement on the record.

Senator MACDONALD: Senator Barbour is here.

Senator MCLEAN: The point I have in mind effects Nova Scotia and New Brunswick more than Prince Edward Island. You say, Mr. Robertson, that Ontario and Quebec had the lands bordering on Hudson Bay?

Mr. ROBERTSON: Down to the low water mark.

Senator MCLEAN: Was it always land that belonged to Ontario and Quebec?

Mr. ROBERTSON: No sir.

Senator MCLEAN: This is a very contentious question in the Maritime provinces. After Confederation those lands were granted to Ontario and Quebec, to enlarge the areas of those two provinces; but Nova Scotia and New Brunswick, who were the other two partners who went into Confederation, received no compensation for this land that was given to the provinces of Ontario and Quebec. We feel that at the time of Confederation the provinces of Nova Scotia and New Brunswick had just as much interest in that land as did Ontario and Quebec.

As I say, this is a contentious question in the Maritime provinces, and I would like that statement to appear on the record.

Senator BOUFFARD: If this bill passes, all the provinces in Canada will be on the same basis as the Northwest Territories and the Yukon Territory,

where, undoubtedly, the federal Government has jurisdiction. If it applies to all provinces in Canada, it means that it applies to Nova Scotia and Quebec. Anyone who wanted to have a concession for the mining of iron ore would have to ask the federal Government whether, in its opinion the ore belonged to the federal Government.

Mr. ROBERTSON: The point is this, Mr. Chairman. Suppose there is iron ore there and the province of Quebec, say, was to go to a law court and say that the land under Ungava Bay was not federal but was provincial and the court was to sustain the province of Quebec, the bill as amended would have no application because that would then be land within a province.

Senator BOUFFARD: It would have an application as up to the present time you had no jurisdiction to deal with these lands except by order in council.

Mr. ROBERTSON: We have no other jurisdiction because there is no federal act applying to it.

Senator BOUFFARD: That is it.

Mr. ROBERTSON: But it is not a question of ownership. If the province owns that land then this act, even if amended, would not apply to it.

Senator BOUFFARD: But if you do amend the act as you now propose to amend it, there would be no concession made of these mines, including the coal mines at Cape Breton. There would be no possibility for the provincial Governments to grant these permits or licences to the mines. You would say to the companies and to the provinces, "These lands belong to us" and a case would have to be taken before the courts.

Mr. ROBERTSON: We have already had several hundred applications for claims off the coast of Hudson Bay. The mining companies that are interested in these are not going to the Quebec or Ontario Governments to record claims because, apparently, their understanding of the law is that these mineral areas are not within Ontario or Quebec. They are coming to us.

Senator MACDONALD: Are these lands off the coast of Ontario and Quebec?

Mr. ROBERTSON: They are off the coast of Quebec for the most part. There has been a good deal of mineral interest up there.

Senator MACDONALD: And you claim they belong not to the provincial Government but to the dominion Government?

Mr. ROBERTSON: We do not claim anything.

Senator MACDONALD: These companies would not make application to you if you did not claim this.

Mr. ROBERTSON: All I say is that we have been advised by the law officers of the Crown that the provincial land only goes to the low water mark off the shore of Hudson Bay and James Bay.

Senator MACDONALD: Yes, but if we pass this bill these applications will not go to the provincial Governments.

Mr. ROBERTSON: They are not going there anyway.

Senator MACDONALD: Well, they would go to the provincial Governments. They will go to the dominion Government and the dominion Government will not consult with the provincial Governments. The dominion Government will issue the licences. Is that not correct?

Mr. ROBERTSON: I would like to make a comment on that statement. If the province of Quebec was of the view that these submerged lands off the shore of Quebec in Hudson Bay are provincial and not federal, it could go to court for a decision on that point.

Senator DUPUIS: If we do not pass this bill they will not have to go to court.

Mr. ROBERTSON: The only difference is that if the bill is not passed nobody will be able to record a mineral claim on these submerged lands.

Senator MACDONALD: Why not?

Mr. ROBERTSON: Apparently the legal advisers of the mining companies that have staked submerged lands think the companies should come to the federal Government. They do, and we cannot record their claims.

Senator MACDONALD: Why should not a similar bill to this be passed in the provinces to give them power to deal with these offshore lands?

Mr. ROBERTSON: Because, if the advice we had from the law officers is correct, that land does not belong to the provinces.

Senator BOUFFARD: As a matter of fact, Mr. Robertson, in Nova Scotia the only licence the Dominion Steel and Coal Company has is a provincial licence, and the province of Nova Scotia gets all the revenue from the coal that is taken away from these underwater mines.

Mr. ROBERTSON: I am aware of that, sir, and I am not saying anything as to the legal position.

Senator BOUFFARD: No, but suppose we pass this legislation it would mean that anyone who wants to have a licence for a mine would have to go to both the province and the dominion to make sure he could have ownership.

Senator DAVIES: As a layman I would like to ask whether the law officers of the Crown or of the department consulted the law officers of the various provinces on this matter?

Mr. ROBERTSON: No, sir.

Senator BOUFFARD: Do you not think that with respect to a question of such importance as this it would be appropriate to consult the provinces?

Mr. ROBERTSON: No, sir.

Senator BOUFFARD: We are going to have a federal-provincial conference within a few days. Perhaps it could be dealt with then.

Mr. ROBERTSON: I should think that this is the kind of matter for the Government to decide, but it seems to me that if there is a dispute on a point of law then the courts would have to decide upon it.

Senator BOUFFARD: The courts have. It was decided in the Fisheries Case that whether it is stagnant water or the bed of a river or waters within the territorial limits of a province, there is no difference so far as the property of the subsoil is concerned, and it all belongs to the province.

Mr. ROBERTSON: The advice of the law officers of the Crown is that the subsoil of the rivers is vested in the provinces.

Senator BOUFFARD: The Fisheries Case concerned the granting of fishing permits with respect to not only inland waters but also waters surrounding a province, and the Privy Council decided that the fishing permits would have to be issued by the province and not by the federal Government. They did not talk about any strip of land a hundred feet in width or low water marks or high water marks. They decided that all the subsoil belonged to the province.

Mr. ROBERTSON: All I can say is that I am not the person who can or should speak on what a court has decided on questions of law. The essential point is that this bill does not affect legal ownership in any way. In any case, where something belongs to the provinces, this bill has no application.

Senator TURGEON: I am not a lawyer but based on the general conversation that has taken place here this morning I would like to ask what is the objective of this amendment? What makes this proposed amendment necessary under the existing law?

Mr. ROBERTSON: I can deal with that, sir. During 1957 we received 297 applications for mining claims on submerged lands in Hudson Bay. Some of those applications were for lands lying off an island called Smith Island, which is near the east shore of Hudson Bay. It is within the Northwest Territories. The opinion of the law officers of the Crown is that the Northwest Territories only go down as far as the low water mark. Under the act as it stands we can record mining claims in the Northwest Territories, and that means we can record mining claims as far as the low water mark.

Senator BOUFFARD: There is no doubt about that because the whole of the Northwest Territories belongs to the federal Government. But when you come to the provinces it is quite different.

Mr. ROBERTSON: If I may continue, sir, once we get beyond the low water mark off Smith Island we cannot record any mining claims.

Senator METHOT: To whom does that island belong?

Mr. ROBERTSON: The Northwest Territories. It is close by the province of Quebec.

Senator METHOT: And you claim it belongs to the Northwest Territories.

Mr. ROBERTSON: If you study the map you will see it is coloured in the colour of the Northwest Territories.

Senator METHOT: Is it not a question of law as to whom it belongs?

Mr. ROBERTSON: Yes, but as far as I am aware there has never been any contest about this.

Senator METHOT: As I understand it they claim there is a strip of metal which starts under the Bay of Ungava and goes as far as the Northwest Territories under Hudson Bay. That is what the mining men claim.

Mr. ROBERTSON: That is right.

Senator METHOT: So there is no doubt that the part which is situated under the Ungava Peninsula belongs to Quebec, for example, and Quebec's ownership goes up to where, to the low water mark?

Mr. ROBERTSON: Yes.

Senator METHOT: All right. Now, under this bill do you not think you are going beyond the 100 foot strip provision?

Mr. ROBERTSON: No, sir, I do not think so. I do not believe it has that effect, because section 8 of the Territorial Lands Act provides that this 100 foot strip is to be reserved out of every grant of territorial lands. It is not reserved out of anything that is not territorial lands.

Senator METHOT: I may accept that.

Mr. ROBERTSON: I believe that is the case, sir.

Senator BOUFFARD: On the other hand, it conflicts with the decision of the Privy Council which did not make any distinction between various kinds of water. The Privy Council deemed that the waters belong to the federal Government for the purposes of navigation. When it comes to soil or subsoil I do not think there is any judgment, certainly not in the Montreal Harbour Case nor the Fisheries Case, to the effect that any part of the soil or subsoil belongs to the federal Government.

Mr. ROBERTSON: I am not aware of any case on this, but as I say, I am not the person to give legal advice.

Senator BOUFFARD: But you are aware of the Fisheries case?

Mr. ROBERTSON: No, I am not.

Senator BOUFFARD: The legal officers of the Justice Department are aware of it.

Mr. ROBERTSON: They undoubtedly are.

Senator BOUFFARD: I would like to have some of the officers of the Justice Department come here and tell us why they take the stand they do with respect to the federal Government's position concerning soil and subsoil.

Mr. ROBERTSON: Would it be helpful if I were to read you a portion of some of the opinions which they have given to us?

Senator MACDONALD: If we are going to have the law officers here, I do not think it advisable to read their opinions.

I think we are clear on this point: If we pass this bill now the federal Government will be empowered to grant 297 licenses to companies to carry on mining operations off the provincial shores; and that the federal Government will get the revenue from those companies, while the provincial Governments will not. Is that the effect of the passage of this bill?

Mr. ROBERTSON: Pardon me, but Mr. Cunningham, the Assistant Deputy Minister of the department, is here and has something to say on that point.

Mr. F. J. G. CUNNINGHAM: Mr. Chairman, the federal Government has at the present time the right to deal with the mining interests who have staked these claims now, but we would have to do it by Order in Council. The regulations now are sometimes superseded by Order in Council.

Mr. BOUFFARD: Why then is this bill necessary?

Mr. CUNNINGHAM: Because there are so many claims, Mr. Chairman, and we do not want to submit dozens, or perhaps hundreds, of Orders in Council.

Mr. ROBERTSON: There is another reason, senator: In the granting of licences with respect to mineral claims it has been found very important to have a clearly defined legal framework, because there is always the possibility of conflict of claims as to time or place of staking, how a claim is registered and so on. It is very important, therefore, to have a clear legal framework. While, as Mr. Cunningham says, these claims could be dealt with by Order in Council, we have nothing now which defines when an Order in Council would be granted, or what proof one would have to have of a claim, or what work would have to be done to keep a claim alive, and that sort of thing. The only way to do this in proper form, as is done in every province, is to have a clear act under which regulations set out what the requirements are with respect to a claim.

Senator BOUFFARD: What effect is that going to have over these lands?

Mr. ROBERTSON: It will have no effect on provincial land.

Senator BOUFFARD: But for practical purposes you will establish that on certain conditions you will grant a license to a corporation who wants a mine, which may be in the soil or in the subsoil of the property which you think belongs to you.

Mr. ROBERTSON: That is right.

Senator BOUFFARD: But we have at the present time the decisions of the court, which do not make any difference between rivers and tidal waters, and the decisions would seem to indicate that the soil and subsoil belong to the provinces. Now you want to pass legislation under which you will have jurisdiction to claim that soil as belonging to the federal Government, and grant licenses for mining operations to the people who come to you?

Mr. ROBERTSON: I think, Mr. Chairman, a point such as this should be discussed with the law officers of the Crown, not with me.

Senator MACDONALD: One further question with respect to the 297 applications you have mentioned: Have these applications come in within the past few months?

Mr. ROBERTSON: In the year 1957, yes.

Senator MACDONALD: Why was the act not amended earlier? Why have you waited so long to amend the act?

Mr. ROBERTSON: There was no earlier opportunity in 1957.

Senator MACDONALD: We have been here since January.

Mr. ROBERTSON: The numerous applications have come in only during the course of 1957.

Senator MACDONALD: They have come in since January. Did any of the 297 applications come in before January?

Mr. CUNNINGHAM: Mineral explorations and stakings are not carried on in January in the Hudson Bay area. These have mostly come in since May.

Mr. ROBERTSON: In actual fact, we have been aware of this problem since before January; the question was put before the previous administration, as to whether an amendment should be introduced at the previous session. But, as you know, that session was a short one, and the Government of the day felt that it could not be put on the legislative program.

Senator MACDONALD: Are you sure that was the reason why the Government did not put it on its program?

Mr. ROBERTSON: Yes, sir.

Senator MACDONALD: Was this bill ever approved by the previous Government?

Mr. ROBERTSON: In draft, no sir; bills normally are not drafted until it is decided that they are going to be placed on a sessional program.

Senator MACDONALD: So that the previous Government took no action with respect to this bill. You are not suggesting, are you, that the previous Government took any action with respect to the bill which we are now considering?

Mr. ROBERTSON: What I am saying, senator, is that we were aware of this problem, and it was raised; the previous Government was aware of the fact that mineral claims on these submerged lands could not be recorded under the act as it then stood, and that some amendment would be necessary.

Senator MACDONALD: Yes, but the Government did not decide they would do it without consulting the provinces?

Mr. ROBERTSON: No, sir.

Senator MACDONALD: That is what is being done here. We are proposing to amend this act, effecting the lands and resources of Canada—and indeed, valuable resources—and we are doing it without taking the provinces into consideration.

Senator BOUFFARD: And we are doing it with the knowledge that in the past the provinces have granted these licences...

Mr. ROBERTSON: No, sir.

Senator BOUFFARD: With respect to mineral rights, Nova Scotia has granted them.

Mr. ROBERTSON: Senator, if the resources are provincial, and the land involved is owned by the province, it should be pointed out that this bill does not change the title to that land. This bill would not change the right to any resources. All the bill does is say that where land is not within the jurisdiction of a province, then this regime applies; if it is within a province, the regime does not apply.

Senator BOUFFARD: According to article 8 you take it for granted that all the lands from the high water mark belongs to the federal Government and is under its jurisdiction.

Mr. ROBERTSON: No, sir.

Senator BOUFFARD: Do you not take that for granted?

Mr. ROBERTSON: No. Section 8 refers to a 100-foot strip out of territorial lands. If the lands are not territorial, there is no 100-foot strip.

Senator MÉTHOT: Where do you start to measure the 100 feet?

Mr. ROBERTSON: According to the act, this 100 feet "from the ordinary high water mark...shall be deemed to be reserved to the Crown out of every grant of territorial lands." Territorial lands are only lands that are not in a province, so the province cannot be affected. This bill does not purport to affect the title to any land anywhere in Canada. All the bill does is provide the administrative framework for lands that are not now in a province.

Senator BOUFFARD: Mr. Robertson, the bill would allow you to administer these lands which you think belong to the federal Government?

Mr. ROBERTSON: As Mr. Cunningham has said, these lands can be administered now, but in a very inefficient and undesirable fashion; in other words, they can be administered by Order in Council, without any administrative framework. We think this is a very poor way to do it.

Senator DUPUIS: They can administer it under an Order in Council, until that order is cancelled by the court.

Mr. ROBERTSON: Exactly.

Senator DUPUIS: Mr. Chairman, I have some knowledge of the question of the ownership of mineral rights. If my memory serves me right, and I think it does, the Quebec Government and the federal Government are now involved in a question as to ownership of mineral rights on Smith Island.

Mr. ROBERTSON: I have not heard of it.

Senator DUPUIS: All the applications for claims from that island are cleared by the provincial Government.

Mr. ROBERTSON: This is the first I have heard of it.

Senator DUPUIS: I had a case involving some mineral rights, and subject to checking the details in my files, I think one of the claim owners had to join with the others to have a land survey made on Smith Island. So, with respect to mineral rights, the question is not decided. I had the feeling that this bill was for the purpose of settling the whole question.

Mr. ROBERTSON: No sir, it is not.

Senator DUPUIS: That was my feeling.

Mr. ROBERTSON: This bill is by way of an administrative measure, because at the present time there are 297 mining claims on submerged land which have come in for consideration, and may be more.

With respect to Smith Island alone there were 1,080 mining claims recorded under the Territorial Lands Act this year.

Senator DUPUIS: Granted by the federal Government?

Mr. ROBERTSON: Yes.

Senator BOUFFARD: That is because this land is in the Yukon Territories.

Mr. ROBERTSON: The Northwest Territories.

Senator BOUFFARD: No province is affected by these claims or licences that you have granted.

Mr. ROBERTSON: That is right.

Senator BOUFFARD: But when you extend this to the whole of Canada you do away and ignore the decisions rendered by the Privy Council.

Mr. ROBERTSON: We could not do that.

Senator BOUFFARD: We ignore them and we allow the Government to grant licences for mining without consulting the provinces who have been doing this since the beginning of Confederation.

Mr. ROBERTSON: I am not a constitutional expert, but as I understand the constitution the federal Parliament cannot by its own action change the title of any land that belongs to the province.

Senator BOUFFARD: There is no doubt about that. Up to the present time the Privy Council has stated definitely that the soil and subsoil belongs to the provinces and now we are giving you the right to issue licences below the low water mark.

Mr. ROBERTSON: No, sir. The amending bill does not say anything about the low water mark at all. It does not attempt to draw any line of ownership.

Senator BOUFFARD: Section 8 of the act reads:

"8. Unless otherwise ordered by the Governor in Council, a strip of land one hundred feet in width, measured from ordinary high water mark or from the boundary line, as the case may be, shall be deemed to be reserved to the Crown out of every grant of territorial lands, where the land extends

- (a) to the sea or an inlet thereof;
- (b) to the shore of any navigable water or an inlet thereof; or
- (c) to the boundary line between the Yukon Territory and Alaska, or between the Yukon Territory and the Northwest Territories, or between the Yukon Territory or the Northwest Territories and the Provinces of Manitoba, Saskatchewan, Alberta or British Columbia."

You want the authority to grant licences with respect to mineral and other property rights in these lands where up to the present time the Privy Council has decided that the soil and subsoil belong to the provinces.

Mr. ROBERTSON: If I may say so I think the crucial words in that section are, "out of every grant of territorial lands". If there are no territorial lands there are no reservations.

Senator DUPUIS: May I suggest that we adjourn this discussion.

Senator BOUFFARD: I second that motion.

Senator VIEN: I am not a member of this committee but with the permission of the committee I would like to speak on one point.

The CHAIRMAN: Please go ahead.

Senator VIEN: From this discussion it seems to me that title to offshore land has not yet been clearly defined. If it has then this bill is not necessary. If it has not, then you are proceeding to vest the title in the Crown under paragraph 2. I have no doubt what Mr. Robertson has said with respect to territorial lands as so defined in the act, but before you proceed to determine by legislation the rights of the federal or provincial Governments with respect to offshore lands, I think this matter should be made the subject of consultation with the provinces. We should not proceed here to determine the title to the offshore lands without first consulting the provinces.

As has been pointed out, the province of Nova Scotia has assumed the right to grant concessions with respect to waters offshore. It has done this and vast sums of money have been invested to operate offshore mines. I think this is a matter of such consequence it should be submitted to the forthcoming federal-provincial conference, which will be held in Ottawa on Monday and Tuesday of next week. If this subject cannot be placed on the agenda of that conference it should be made the subject matter of a study between the federal Government and the provincial Governments before we are called upon to pass this legislation.

If this bill is purely for administrative purposes with respect to offshore lands in the Yukon Territory and the Northwest Territories, it would be very simple to bring in a bill wherein administrative powers with respect to the offshore lands of the Yukon Territory and the Northwest Territories would be given to the federal Government. However, that would have to be studied in the light of its effects on provincial rights when territorial lands or offshore lands of the Yukon Territory or the Northwest Territories come so near the provincial lands themselves.

The committee is not in a position to do this now and I would suggest that its members carefully consider how they should proceed to bring the federal Parliament and the provinces together to determine the ownership of offshore lands.

Senator MACKINNON: Do you not think we should call the law officers of the Crown here before we indefinitely postpone the consideration of this legislation as suggested by some honourable senators?

Senator MACDONALD: Senator Vien has suggested that this matter might be taken up at the dominion-provincial conference to be held next week.

Senator MACKINNON: That would result in an indefinite postponement with respect to dealing with this legislation.

Senator MACDONALD: I do not know, but if Senator Vien's suggestion could be carried out I think it would help us to expedite this matter.

Senator DAVIES: Do you think there would be time to do it at this conference? There are only two sitting days and they have a lot of financial difficulties to discuss?

Senator MACDONALD: There may not be enough time.

Senator BOUFFARD: It seems to me that everyone here agrees this is an important matter and one that may seriously affect the provinces. It will place those who want to acquire mining licences in an awkward position. They will have to come to the federal Government which thinks the soil belongs to it, and then they will have to go to the provinces, which will claim the soil belongs to them. It will impose a hardship on the companies, who will have to go to both places. I rather doubt whether the provincial and federal authorities could get together on this question next week, but it seems to me that the least we can do is hear the law officers of the Crown and to call upon provincial representatives to appear before this committee, if they feel they have an interest on this important question. If the committee were to invite the provincial ministers concerned to come and put their opinion before it, I think the question would be much clearer and we would know whether any provincial rights were being infringed. Another solution would be to submit the whole matter to the Supreme Court.

Senator MACDONALD: The provinces could go to the Supreme Court and make their representations.

Senator BOUFFARD: Exactly.

Senator MACDONALD: Has the Senate the power to have a question submitted to the Supreme Court?

Senator VIEN: Neither the committee nor the Senate itself could do that because this is a public bill. The right to refer matters to the Supreme Court is limited to private bills.

This committee could very well recommend that this bill be held in abeyance, pending reference by the Governor in Council to the Supreme Court. Neither the Senate nor the House of Commons have the power under section 56 of the Supreme Court Act, which I read before coming down here, to make a direct reference to the Supreme Court with respect to private bills

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or petitions for private bills. This being a public bill, the committee could recommend to the Senate that this matter be referred by the Governor in Council to the Supreme Court for a decision.

Senator BOUFFARD: My proposition was—and I do not know whether Senator Vien concurs in it—that consideration of this bill be suspended until we heard the law officers, after having advised all the provinces.

Senator VIEN: We could adjourn until next week.

Senator BOUFFARD: The Dominion-Provincial Conference is to take place here next week. I do not think there would be sufficient time between now and next week to advise the provincial Governments. I think we should give an interval of at least ten days.

Senator MACDONALD: Do you think the provinces should be sent a transcript of our proceedings here today?

The CHAIRMAN: That is a good idea. First, may we have a motion asking for the authority to print the proceedings?

Senator DUPUIS: Mr. Chairman, I move that 600 copies in English and 200 copies in French of our proceedings today be printed.

Senator VIEN: Perhaps the proceedings could be made an appendix to the Senate debates.

Senator BOUFFARD: Notice should be sent to all Ministers of Mines in the provincial Governments.

Mr. ROBERTSON: Perhaps it is not my place to do it, but I would raise the question of whether or not the committee should hear the federal law officers before specifically deciding that they wish to call in representatives from the provinces. The federal officers may well be able to throw light on this bill, which I have not been able to do.

Senator BOUFFARD: If the federal officers are coming here to state the law and give their opinion, I think the provincial representatives should be here at that time; it may be that the provinces may have to study the matter further, before making any suggestions. In any event, it would be very important for the provincial representatives to be notified.

Senator MACDONALD: You agree with that, Senator Methot, do you?

Senator METHOT: Yes.

Senator DAVIES: I do not think we can hurry this procedure. An interval of ten days may not be sufficient time to allow the provincial officers to express an opinion in this matter. While I am not a lawyer, I recognize that the matter is very complicated. While it would be interesting to hear the federal officers, I feel the provincial representatives should be here at that time. We have heard what Senator McLean had to say about a contentious question in the Maritime provinces. We might easily do something which would further prejudice the Maritime provinces.

Senator MACDONALD: Do you think two weeks is too short a time?

Senator DAVIES: Perhaps it is sufficient.

Senator VIEN: The motion before the committee is that the record of these proceedings be printed and distributed in the usual way among senators and members of the House of Commons, and that a copy be sent to the Minister of Mines for each of the provincial Governments, advising them of the next sitting of the committee, which they may attend if they choose to.

The CHAIRMAN: That is the motion. All in favour?

The motion was agreed to.

Whereupon the committee adjourned to the call of the Chair.